

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

RED BARN MOTORS, INC., PLATINUM )  
MOTORS, INC., and MATTINGLY AUTO )  
SALES, INC., individually and on behalf of )  
other members of the general public similarly )  
situated, )

Plaintiffs, )

v. )

NEXTGEAR CAPITAL, INC. f/k/a DEALER )  
SERVICES CORPORATION, )

Defendant. )

Case No. 1:14-cv-01589-TWP-DLP

**JOINT MOTION FOR ENTRY OF SCHEDULING ORDER**

The parties respectfully request that the Court enter an Order establishing certain pretrial deadlines. In support of this motion, the parties show as follows:

1. The Court has entered an Order scheduling the pretrial conference for December 22, 2020 and setting a trial date of January 25, 2021. [Doc. 333.]

2. There have been significant developments in the case since the most recent pretrial scheduling order was entered. For the sake of efficiency and to avoid doubt regarding deadlines, the parties respectfully request that the Court set new deadlines for the parties to update the Court regarding the status of opt-outs from the class; disclose expert witness testimony; file final witness and exhibit lists; and complete other pretrial filings.

3. The parties respectfully suggest that a deadline of July 10, 2020 would be appropriate for the Plaintiffs to provide an update from the class administrator to the Court regarding class notice and opt-outs from the class.

4. The parties have scheduled a mediation for September 1, 2020. In light of the mediation date, the parties respectfully suggest that the deadline to disclose expert witness testimony be staggered as follows:

- a. Plaintiffs will provide a preliminary calculation of class-wide damages to Defendant for settlement purposes only no later than 14 days after data related to class member transactions that took place after July 31, 2013 is produced by NextGear.
- b. Defendant will provide its preliminary objections and/or rebuttal to Plaintiffs' calculation of class-wide damages for settlement purposes only by August 25, 2020.
- c. Plaintiffs will serve a supplemental expert report regarding class-wide damages by September 30, 2020.
- d. Defendant will serve any rebuttal expert report regarding class-wide damages by October 30, 2020.
- e. Expert discovery will close November 25, 2020.

5. The parties respectfully suggest that December 1, 2020 would be an appropriate deadline to file final witness and exhibit lists.

6. The parties respectfully suggest that the following dates would be appropriate deadlines for the remaining pretrial deadlines:

- a. Two weeks before the final pretrial conference, on December 8, 2020, the parties shall:
  - i. File any motions in limine, including motions in limine to exclude expert testimony.

- ii. File a list of trial witnesses, by name, who are actually expected to be called to testify at trial. This list may not include any witnesses not on a party's final witness list.
- iii. Number in sequential order all exhibits, including graphs, charts and the like, that will be used during the trial. Provide the Court with a list of these exhibits, including a description of each exhibit and the identifying designation. Make the original exhibits available for inspection by opposing counsel. Stipulations as to the authenticity and admissibility of exhibits are encouraged to the greatest extent possible.
- iv. Submit all stipulations of facts in writing to the Court. Stipulations are always encouraged so that at trial, counsel can concentrate on relevant contested facts.
- v. A party who intends to offer any depositions into evidence during the party's case in chief shall prepare and file with the Court and copy to all opposing parties either:
  - 1. brief written summaries of the relevant facts in the depositions that will be offered. (Because such a summary will be used in lieu of the actual deposition testimony to eliminate time reading depositions in a question and answer format, this is strongly encouraged); or
  - 2. if a summary is inappropriate, a document which lists the portions of the deposition(s), including the specific page and line numbers, that will be read, or, in the event of a video-taped deposition, the portions

of the deposition that will be played, designated specifically by counter-numbers.

- vi. Provide all other parties and the Court with proposed findings of fact and conclusions of law.
  - vii. Notify the Court and opposing counsel of the anticipated use of any evidence presentation equipment.
- b. One week before the final pretrial conference, on December 15, 2020, the parties shall:
- i. Notify opposing counsel in writing of any objections to the proposed exhibits. If the parties desire a ruling on the objection prior to trial, a motion should be filed noting the objection and a description and designation of the exhibit, the basis of the objection, and the legal authorities supporting the objection.
  - ii. If a party has an objection to the deposition summary or to a designated portion of a deposition that will be offered at trial, or if a party intends to offer additional portions at trial in response to the opponent's designation, and the parties desire a ruling on the objection prior to trial, the party shall submit the objections and counter summaries or designations to the Court in writing. Any objections shall be made in the same manner as for proposed exhibits. However, in the case of objections to video-taped depositions, the objections shall be brought to the Court's immediate attention to allow adequate time for editing of the deposition prior to trial.
  - iii. File oppositions to any motions in limine.

iv. Notify the Court and opposing counsel of requests for separation of witnesses at trial.

c. Two weeks before trial, on January 11, 2021, the parties shall file trial briefs.

WHEREFORE, the parties respectfully request that the Court enter the attached Proposed Scheduling Order.

Respectfully submitted, this 6th day of July, 2020.

/s/ Paul D. Vink (with permission)

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing has been served upon the following counsel of record via the Court's electronic service notification system, this 6th day of July, 2020:

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